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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 319, 322, and 360

[Docket No. APHIS-2011-0085]

RIN 0579-AD76

Consolidation of Permit Procedures; Denial and Revocation of Permits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are consolidating the regulations concerning the issuance of permits for the importation and interstate movement of a wide variety of regulated plants, plant products, and other articles. We are also making corresponding changes to the regulations concerning permits for the importation and interstate movement of noxious weeds and the importation of honeybees and other beekeeping articles. The regulations will also include new provisions for the denial of a permit and the revocation of a permit once issued. These changes will make our permit procedures more transparent and easier to use, allow us to evaluate a permit application more quickly and thoroughly, and help us hold permittees accountable for complying with permit conditions.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. Marc Phillips, Senior Regulatory Policy Specialist, Regulatory Compliance and Coordination, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2114.

## SUPPLEMENTARY INFORMATION:

### Background

The Plant Protection Act, as amended, (PPA, 7 U.S.C. 7701 et seq.) states that it is the responsibility of the Secretary of Agriculture to facilitate exports, imports, and interstate commerce of agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce the risk of dissemination of plant pests or noxious weeds that could constitute a threat to crops and other plants or plant products and burden interstate or foreign commerce. The Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, noxious weed, or article if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States or the dissemination of a plant pest or noxious weed within the United States.

To implement these prohibitions and restrictions, sections 7711 and 7712, among others, of the PPA further provide that the Secretary may issue regulations, including those that require that a permit be obtained for plants, plant products, noxious weeds, or other regulated articles prior to their importation or movement in interstate commerce. The Secretary has delegated the authority provided by the PPA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations issued under the authority of the PPA are primarily administered and enforced by APHIS' Plant Protection and Quarantine program (PPQ).

Requiring a written permit for the importation or interstate movement of plants, plant products, noxious weeds, or other regulated articles reduces the risk of the introduction or dissemination of a plant pest or noxious weed in the United States in several ways.

APHIS' regulations and Federal Orders, as well as permits, inform applicants of the requirements and conditions for importation or interstate movement of regulated articles that we have determined are necessary to mitigate the risk of introducing or disseminating a plant pest or noxious weed. Requiring a written permit also allows APHIS to hold permittees accountable for complying with permit conditions and to specify the plant products allowed into the United States or allowed to move interstate. A permit prescribes the binding conditions that the applicant for a permit, and the permittee, must adhere to under the permit and the pertinent regulations. The information contained in an application for a permit must also provide for clear and continuous accountability for the importation or movement of the plant, plant product, or other article.

The regulations contained in 7 CFR part 319, Foreign Quarantine Notices, prohibit or restrict the importation into the United States of certain plants, roots, bulbs, seeds, or other plant products to prevent plant pests and noxious weeds from being introduced and spread within the United States. The restricted or prohibited plant products include plants for planting, cut flowers, fruits and vegetables, foreign cotton and covers, sugarcane, citrus, corn and related plants, rice, wheat, logs and other unmanufactured wood articles, packing materials, and coffee.

The regulations in 7 CFR part 322 prohibit or restrict the importation of honeybees and honeybee semen in order to prevent the introduction into the United States of diseases and parasites harmful to honeybees and of undesirable species.

The regulations in 7 CFR part 360 restrict the importation and interstate movement of those plants that are designated as noxious weeds.

On June 21, 2013, we published in the Federal Register (78 FR 37481-37495, Docket No. APHIS-2011-0085) a proposal<sup>1</sup> to establish a new subpart in part 319 entitled “Permits: Application, Issuance, Denial, and Revocation,” which would include §§ 319.7 through 319.7-5 and would serve as generally applicable requirements in part 319 for obtaining a permit to import plants or plant products. The requirements contained in the proposed subpart would provide applicants for permits with more detailed information regarding the process for applying for a permit and indicate the type of information we would require in a permit application. We also proposed to make consistent and clear the provisions for how we will approve, deny, or revoke a permit and to apply the proposed provisions, as appropriate, to parts 322 and 360.

We solicited comments concerning our proposal for 60 days ending August 20, 2013. We received one comment by that date, from a private citizen. The comment expressed general opposition to the importation of plants from China, but did not address any provisions of the proposed rule. We are making no changes in response to this comment.

We are making several miscellaneous changes to the proposal in this final rule. Proposed § 319.7-1(c) would have required that permit applications specify the intended port of first arrival. However, PPQ permits often allow for a range of ports of first arrival to be used; indeed, proposed § 319.7-2(a), regarding the issuance of permits, indicated that the permit would specify the port of entry and, when needed, allowed ports of first arrival. Allowing importers to use multiple ports of first arrival offers flexibility in logistical arrangements, while continuing to allow PPQ to apply needed restrictions if an article should not be presented at a certain port of first arrival. (For example, an article that poses a risk of being infested with fruit flies would be limited to ports of first arrival where the fruit fly could not overwinter if it escaped into the

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<sup>1</sup> To view the proposed rule and the comment we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0085>.

surrounding environment.) To make the regulations consistent, we are allowing permit applications to specify multiple intended ports of first arrival.

In the proposed rule, § 319.7-2(f) set out proposed requirements for permittees. Paragraph (f)(7) would have required that permittees acknowledge in writing that in accordance with section 8313 of the PPA, the actions, omissions, or failures of any agent of the permittee may be deemed the actions, omissions, or failures of a permittee as well; and that failure to comply with all of the conditions specified in the permit or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of any future permits, and civil or criminal penalties for the permittee. (In the proposed rule, the section citation to the PPA was incorrect; we are changing it in this final rule to cite to section 7734.)

However, paragraph (f)(5) requires that the permittee provide written or electronic acknowledgment and acceptance of permit conditions only when APHIS requests such acknowledgment. This reflects the fact that, while APHIS normally requires written or electronic acknowledgment, oral acknowledgment is acceptable in some cases. It would be inconsistent to require written or electronic acknowledgment of the permit conditions only sometimes but require written acknowledgment of paragraph (f)(7) and thereby of section 7734 all the time. The most important thing is to clearly communicate the provisions of paragraph (f)(7) and section 7734 in the regulations, so that permittees and other regulated parties are aware that the actions of an agent of a permittee may be deemed the actions of a permittee. Therefore, we have decided not to include proposed paragraph (f)(7) in this final rule. Instead, we have added a paragraph communicating the provisions of section 7734 of the PPA as paragraph (m) of § 319.7-2.

In the proposed rule, paragraph (b) of § 319.7-3 set out reasons for denying a permit to import a regulated article. Paragraph (b)(3) indicated that we would deny a permit if APHIS concludes that the actions proposed under the permit would present an unacceptable risk to plants and plant products because of the introduction or dissemination of a plant pest, biological control organism, or noxious weed within the United States. The final rule indicates that the reason to deny a permit is the potential for the introduction or dissemination, rather than the introduction or dissemination itself; the introduction or dissemination would only happen if APHIS did issue the permit and the plant, plant product, or other article was imported or moved interstate. We are also removing the reference to biological control organisms, as permitting for the importation of such organisms is handled in 7 CFR part 330 and not in part 319.

Paragraph (b)(4) indicated that we would deny a permit if the importation is adverse to the conduct of an eradication, suppression, control, or regulatory program of APHIS. However, States also conduct eradication, suppression, control, and regulatory programs, and APHIS often supports the States with their phytosanitary programs by providing technical and other assistance. While these programs are not APHIS programs as such, we need to be able to deny a permit based on the potential of the importation to adversely affect such a program. Accordingly, this final rule does not limit the programs to APHIS programs but rather refers to any eradication, suppression, control, or other phytosanitary programs of APHIS or ones recognized by APHIS.

Paragraph (a) of § 319.7-2 describes how APHIS will issue a permit if the regulated articles in question are eligible for importation. We have greatly simplified the wording of this paragraph in the final rule, although its substantive provisions are identical to those of proposed

§ 319.7-2(a). This final rule also includes several nonsubstantive changes to increase the clarity of the regulations and corrects several typographical errors in the proposed regulatory text.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

#### Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

Entities that may be affected by the rule are importers of restricted plants and plant products, including flowers, nursery stock, fruits and vegetables, cotton, sugarcane, logs, packing materials, other manufactured wood articles, and coffee, as well as importers of plants designated as noxious weeds, honeybees and honeybee semen, and regulated articles allowed entry on a temporary basis, such as for transshipment. While nearly all of the entities that may be affected by the rule are small, none of the effects would be economically significant. The rule will make the permit procedures more transparent and easier to use, enable APHIS to evaluate a permit allocation more quickly and thoroughly, and allow for more efficient control of the issuance of permits and entry of regulated articles.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

#### List of Subjects

##### 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

##### 7 CFR Part 322

Bees, Honey, Imports, Reporting and recordkeeping requirements.

##### 7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

Accordingly, we are amending 7 CFR chapter III as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:



Authority: 7 U.S.C. 450 and 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.6, paragraph (g) is revised to read as follows:

§ 319.6 Controlled import permits.

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(g) Denial, withdrawal, cancellation, or revocation of permit. The Administrator may deny a permit application in accordance with § 319.7-3, and a permit may be withdrawn, canceled, or revoked in accordance with § 319.7-4.

(1) Action upon cancellation or revocation of permit. Upon cancellation or revocation of a permit, the permittee must surrender, destroy, or remove all regulated plant material covered by the permit in accordance with § 319.7-4(e).

(2) Appeal of denial or revocation. Any person whose application for a permit has been denied or whose permit has been revoked may appeal the denial or revocation in accordance with § 319.7-5.

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3. A subpart consisting of §§ 319.7 through 319.7-5 is added to read as follows:

Subpart--Permits: Application, Issuance, Denial, and Revocation

Sec.

319.7 Definitions.

319.7-1 Applying for a permit.

319.7-2 Issuance of permits and labels.

319.7-3 Denial of permits.

319.7-4 Withdrawal, cancellation, and revocation of permits.

319.7-5 Appeal of denial or revocation.

Subpart—Permits: Application, Issuance, Denial, and Revocation

§ 319.7 Definitions.

The following definitions apply to this subpart:

Administrative instructions. Published documents related to the enforcement of this part and issued under authority of the Plant Protection Act, as amended (7 U.S.C. 7701 et seq.), by the Administrator.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Applicant. A person at least 18 years of age who, on behalf of him- or herself or another person, submits an application for a permit to import into the United States or move interstate a regulated article in accordance with this part.

Approved. Approved by the Administrator of the Animal and Plant Health Inspection Service.

Article. Any material or tangible objects that could harbor or be a vector of plant pests or noxious weeds.

Consignment. A quantity of plants, plant products, and/or other articles being moved from one country to another authorized when required, by a single permit. A consignment may be composed of one or more commodities or lots.

Country of origin. The country where the plants, or plants from which the plant products are derived, were grown or where the non-plant articles were produced.

Enter, entry. To move into, or the act of movement into, the commerce of the United States.

Import, importation. To move into, or the act of movement into, the territorial limits of the United States.

Inspector. Any individual authorized by the Administrator of the Animal and Plant Health Inspection Service or the Commissioner of the Bureau of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

Intended use. The purpose for the importation of the regulated article, including, but not limited to, consumption, propagation, or research purposes.

Lot. All the regulated articles on a single means of conveyance that are derived from the same species of plant or are the same type of non-plant article, were subjected to the same treatments prior to importation, and are consigned to the same person.

Means of conveyance. Any personal property used for or intended for use for the movement of any other personal property.

Move. To carry, enter, import, mail, ship, or transport; to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting; to offer to carry, enter, import, mail, ship, or transport; to receive to carry, enter, import, mail, ship, or transport; to release into the environment; or to allow any of the activities described in this definition.

Oral authorization. Verbal permission to import that may be granted by an inspector at the port of entry.

Permit. A written authorization, including by electronic methods, to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Administrator.

Permittee. The person who, on behalf of self or another person, is legally the importer of an article, meets the requirements of § 319.7-2(f), and is responsible for compliance with the conditions for the importation that is the subject of a permit issued in accordance with this part.

Person. Any individual, partnership, corporation, association, joint venture, or other legal entity.

Plant. Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

Plant pest. Any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan; a nonhuman animal; a parasitic plant; a bacterium; a fungus; a virus or viroid; an infectious agent or other pathogen; or any article similar to or allied with any of the foregoing enumerated articles.

Plant product. Any flower, fruit, vegetable, root, bulb, seed, or other plant part that is not included in the definition of plant, or any manufactured or processed plant or plant part.

Port of entry. A port at which a specified shipment or means of conveyance is accepted for entry or admitted without entry into the United States for transit purposes.

Port of first arrival. The area (such as a seaport, airport, or land border) where a person or means of conveyance first arrives in the United States, and where inspection of regulated articles may be carried out by inspectors.

PPQ. The Plant Protection and Quarantine Program, Animal and Plant Health Inspection Service of the United States Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines and regulations.

Regulated article. Any material or tangible object regulated by this part for entry into the United States or interstate movement.

Soil. The unconsolidated material from the earth's surface that consists of rock and mineral particles mixed with organic material and that supports or is capable of supporting biotic communities.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Treatment. A procedure approved by the Administrator for neutralizing infestations or infections of plant pests or diseases, such as fumigation, application of chemicals or dry or moist heat, or processing, utilization, or storage.

United States. All of the States.

§ 319.7-1 Applying for a permit.

(a) Persons who wish to import regulated articles into the United States must apply for a permit, unless the regulated articles are not subject to a requirement under this part that a permit be issued prior to a consignment's arrival. An applicant for a permit to import regulated articles into the United States in accordance with this part must be:

(1) Capable of acting in the capacity of the permittee in accordance with § 319.7-2(e), or must designate a permittee who is so capable should the permit be issued;

(2) Applying for a permit on behalf of self or on behalf of another person as permittee;  
and

(3) At least 18 years of age.

(b) Permit applications must be submitted by the applicant in writing or electronically through one of the means listed at [http://www.aphis.usda.gov/plant\\_health/permits/index.shtml](http://www.aphis.usda.gov/plant_health/permits/index.shtml) in advance of the action(s) proposed on the permit application.

(c) The application for a permit must contain the following information:

(1) Legal name, address, and contact information of the applicant, and affirmation by the applicant that the applicant is at least 18 years of age;

(2) The same information of the permittee if different from the applicant, and, if the permittee is an individual, affirmation by the permittee that the permittee is at least 18 years of age;

(3) Specific type of regulated article (common and scientific names, if applicable);

(4) Country of origin;

(5) Intended use of the regulated article;

(6) Intended port(s) of first arrival; and

(7) A description of any processing, treatment, or handling of the regulated article to be performed prior to or following importation, including the location where any processing or treatment was or will be performed and the names and dosage of any chemical employed in treatments of the regulated article.

(d) The application for a permit may also require the following information:

(1) Means of conveyance;

(2) Quantity of the regulated article;

(3) Estimated date of arrival;

(4) Name, address, and contact information of any broker or subsequent custodian of the regulated article;

(5) Exporting country from which the article is to be moved, when not the country of origin; and

(6) Any other information determined to be necessary by APHIS to inform the decision to issue the permit.

(e) Application for a permit to import regulated articles into the United States must be submitted at least 30 days prior to arrival of the article at the port of entry.

(1) If, through no fault of the importer, a consignment of regulated articles subject to a requirement under this part that a permit be issued prior to a consignment's arrival arrives at a U.S. port before a permit is received, the consignment may be held, under suitable safeguards prescribed by the inspector, in custody at the risk and expense of the importer pending issuance of a permit or authorization from APHIS.

(2) An oral authorization may be granted by an inspector at the port of entry for a consignment, provided that:

(i) All applicable entry requirements are met;

(ii) Proof of application for a written permit is provided to the inspector; and

(iii) PPQ verifies that the application for a written permit has been received and that PPQ intends to issue the permit.

#### § 319.7-2 Issuance of permits and labels.

(a) Upon receipt of an application, APHIS will issue a permit if, after review of the application, APHIS determines that the regulated articles are eligible to be imported into the United States under any applicable conditions. The permit will specify the applicable conditions of entry and the port of entry, and a copy will be provided to the permittee. The permit will only be valid for the time period indicated on the permit.

(b) The applicant for a permit for the importation of regulated articles into the United States must designate the person who will be named as the permittee upon the permit's issuance. The applicant and the permittee may be the same person or different persons.

(c) The act, omission, or failure of the permittee as an officer, agent, or person acting for or employed by any other person within the scope of his or her employment or office will be deemed also to be the act, omission, or failure of the other person.

(d) Failure to comply with all of the conditions specified in the permit or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of any future permits, and civil or criminal penalties for the permittee.

(e) The permittee will remain responsible for the consignment regardless of any delegation to a subsequent custodian of the importation.

(f) A permittee must:

(1) If an individual, be at least 18 years of age and have and maintain an address in the United States that is specified on the permit and be physically present during normal business hours at that address during any periods when articles are being imported or moved interstate under the permit; or

(2) If another legal entity, maintain an address or business office in the United States with a designated individual for service of process; and

(3) Serve as the contact for the purpose of communications associated with the movement of the regulated article for the duration of the permit. The PPQ Permit Unit must be informed of a change in contact information for the permittee within 10 business days of such change;



(4) Ensure compliance with the applicable regulatory requirements and permit conditions associated with the movement of the regulated article for the duration of the permit;

(5) Provide written or electronic acknowledgment and acceptance of permit conditions when APHIS requests such acknowledgment;

(6) Serve as the primary contact for communication with APHIS regarding the permit;  
and

(7) Maintain all conditions of the permit for the entirety of its prescribed duration.

(g) The regulated article may be imported only if all applicable requirements of the permit issued for the importation of the regulated article or any other documents or instructions issued by APHIS are met and complied with as determined by APHIS.

(h) In accordance with the regulations in this part, labels may be issued to the permittee for the importation of regulated articles. Such labels may contain information about the shipment's nature, origin, movement conditions, or other matters relevant to the permit and will indicate that the importation is authorized under the conditions specified in the permit.

(1) If issued, the quantity of labels will be sufficient for the permittee to attach one to each parcel. Labels must be affixed to the outer packaging of the parcel.

(2) Importations without such required labels will be refused entry into the United States, unless a label is not required and not issued for the importation.

(i) Even if a permit has been issued for the importation of a regulated article, the regulated article may be imported only if an inspector at the port of entry determines that no

remedial measures pursuant to the Plant Protection Act are necessary to mitigate or address any plant pest or noxious weed risks.<sup>1</sup>

(j) A permit application may be withdrawn at the request of the applicant prior to the issuance of the permit.

(k) A permit may be canceled after issuance at the request of the permittee.

(l) A permit may be amended if APHIS finds that the permit is incomplete or contains factual errors.

(m) In accordance with Section 7734 of the Plant Protection Act, as amended (7 U.S.C. 7701 et seq.), the actions, omissions, or failures of any agent of the permittee may be deemed the actions, omissions, or failures of a permittee as well; and that failure to comply with all of the conditions specified in the permit or any applicable regulations or administrative instructions, or forging, counterfeiting, or defacing permits or shipping labels, may result in immediate revocation of the permit, denial of any future permits, and civil or criminal penalties for the permittee.

#### § 319.7-3 Denial of permits.

(a) APHIS may deny an application for a permit to import a regulated article into the United States. A denial, including the reason for the denial, will be provided in writing, including by electronic methods, to the applicant as promptly as circumstances permit. The denial of a permit may be appealed in accordance with § 319.7-5.

(b) APHIS may deny an application for a permit to import a regulated article:

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<sup>1</sup> An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, and other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(1) If APHIS determines that the applicant is not likely to abide by permit conditions.

Factors that may lead to such a determination include, but are not limited to, the following:

(i) The applicant, or a partnership, firm, corporation, or other legal entity in which the applicant has a substantial interest, financial or otherwise, has not complied with any permit that was previously issued by APHIS;

(ii) APHIS determines that issuing the permit would circumvent any order revoking or denying a permit under the Plant Protection Act;

(iii) APHIS determines that the applicant has previously failed to comply with any APHIS regulation;

(iv) APHIS determines that the applicant has previously failed to comply with any Federal, State, or local law, regulation, or instruction concerning the importation of prohibited or restricted foreign agricultural products;

(v) APHIS determines that the applicant has failed to comply with the laws or regulations of a national plant protection organization or equivalent body, as these pertain to plant health;

(vi) APHIS determines that the applicant has made false or fraudulent statements or provided false or fraudulent records to APHIS; or

(vii) The applicant has been convicted or has pled nolo contendere to any crime involving fraud, bribery, extortion, or any other crime involving a lack of integrity.

(2) If the application for a permit contains information that is found to be materially false, fraudulent, deceptive, or misrepresentative;

(3) If APHIS concludes that the actions proposed under the permit would present an unacceptable risk to plants and plant products because of the potential for introduction or dissemination of a plant pest or noxious weed within the United States;

(4) If the importation is adverse to the conduct of an eradication, suppression, control, or phytosanitary program of APHIS or a program recognized by APHIS;

(5) If the importation is not in compliance with any applicable import regulations or any administrative instructions or measures, including, but not limited to, all the requirements of this part; or

(6) If a State executive official, or a State plant protection official authorized to do so, objects to the movement in writing and provides specific, detailed information that there is a risk the movement will result in the dissemination of a plant pest or noxious weed into the State, and APHIS determines that such plant pest risk cannot be adequately addressed or mitigated.

§ 319.7-4 Withdrawal, cancellation, and revocation of permits.

(a) Withdrawal of an application. If the applicant wishes to withdraw a permit application before issuance of a permit, he or she must provide the request in writing to APHIS. APHIS will provide written notification to the applicant as promptly as circumstances allow regarding reception of the request and withdrawal of the application.

(b) Cancellation of permit by permittee. If a permittee wishes to cancel a permit after its issuance, he or she must provide the request in writing to APHIS. APHIS will provide written notification to the applicant as promptly as circumstances allow regarding reception of the request and withdrawal of the application.

(c) Revocation of permit by APHIS. APHIS may revoke any outstanding permit to import regulated articles into the United States. A revocation, including the reason for the

revocation, will be provided in writing, including by electronic methods, to the permittee as promptly as circumstances permit. The revocation of a permit may be appealed in accordance with § 319.7-5.

(d) APHIS may revoke a permit to import a regulated article if:

(1) Information is received subsequent to the issuance of the permit of circumstances that APHIS determines would constitute cause for the denial of an application under § 319.7-3; or

(2) APHIS determines that the permittee has failed to maintain the safeguards or otherwise observe the conditions specified in the permit or in any applicable regulations or administrative instructions, including, but not limited to, all of the requirements of this part.

(e) Upon revocation of a permit, the permittee must, without cost to the Federal Government and in the manner and method APHIS considers appropriate, either:

(1) Surrender all regulated articles covered by the revoked permit and any other affected plant material to an inspector;

(2) Destroy, under the supervision of an inspector, all regulated articles covered by the revoked permit and any other affected plant material; or

(3) Remove all regulated articles covered by the revoked permit and any other affected plant material from the United States.

#### § 319.7-5 Appeal of denial or revocation.

(a) All denials of an application for a permit, or revocations of an existing permit, will be provided in writing, including by electronic methods, as promptly as circumstances permit and will include the reasons for the denial or revocation.

(b) Any person whose application for a permit has been denied or whose permit has been revoked may appeal the decision in writing to APHIS within 10 business days from the date the

communication of notification of the denial or revocation of the permit was received. The appeal must state all facts and reasons upon which the person is relying to show that the denial or revocation was incorrect.

(c) APHIS will grant or deny the appeal in writing and will state in writing the reason for the decision. The denial or revocation will remain in effect during the resolution of the appeal.

§ 319.8-1 [Amended]

4. In § 319.8-1, the definition of permit is amended by adding the words “and in §§ 319.7 through 319.7-5” before the period.

§ 319.8-2 [Amended]

5. Section 319.8-2 is amended as follows:

a. In paragraph (a), by removing, in the third sentence, the words “stating the name and address of the importer, the country from which such material is to be imported, and the kind of cotton or covers it is desired to import” and footnote 1, and adding the words “for a permit in accordance with §§ 319.7 through 319.7-5” in their place.

b. By redesignating footnote 2 as footnote 1.

c. By removing paragraphs (c) and (d) and redesignating paragraphs (e) and (f) as paragraphs (c) and (d), respectively.

d. In newly redesignated paragraph (d), in the first sentence, by removing the words “with all requirements set forth therein and such additional requirements in this subpart as are in terms applicable thereto” and adding the words “with all of the conditions specified in the permit and any applicable regulations or administrative instructions of this part” in their place, and by removing the second and third sentences of this paragraph.

e. By removing paragraph (g) and redesignating paragraph (h) as paragraph (e).

§ 319.8-8 [Amended]

6. In § 319.8-8, footnote 3 is redesignated as footnote 2.

§ 319.8-11 [Amended]

7. In § 319.8-11, footnote 4 is redesignated as footnote 3.

§ 319.8-17 [Amended]

8. In § 319.8-17, footnote 5 is redesignated as footnote 4.

9. Section 319.24-1 is revised to read as follows:

§ 319.24-1 Application for permits for importation of corn.

Persons contemplating the importation of corn into the United States shall obtain a permit in accordance with §§ 319.7 through 319.7-5.

(Approved by the Office of Management and Budget under control number 0579-0049)

§ 319.24-2 [Removed and Reserved]

10. Section 319.24-2 is removed and reserved.

§ 319.24-4 [Removed and Reserved]

11. Section 319.24-4 is removed and reserved.

§ 319.28 [Amended]

12. Section 319.28 is amended by removing paragraphs (j) and (k).

13. Section 319.37-3 is amended as follows:

- a. In paragraph (a), introductory text, by adding the words “in accordance with §§ 319.7 through 319.7-5” after the word “Programs”.

- b. By removing and reserving paragraph (b) and removing footnote 4.

- c. By redesignating footnote 5 as footnote 4.

- d. By revising paragraph (d).

e. By removing paragraphs (e) and (f) and redesignating paragraphs (g) and (h) as paragraphs (e) and (f), respectively.

The revision reads as follows:

§ 319.37-3 Permits.

\* \* \* \* \*

(d) Any permit that has been issued may be revoked by an inspector or APHIS in accordance with § 319.7-4.

\* \* \* \* \*

§ 319.37-5 [Amended]

14. In § 319.37-5, footnote 6 is redesignated as footnote 5.

§ 319.37-6 [Amended]

15. In § 319.37-6, footnote 7 is redesignated as footnote 6.

§ 319.37-7 [Amended]

16. In § 319.37-7, footnote 8 is redesignated as footnote 7.

§ 319.37-8 [Amended]

17. In § 319.37-8, footnotes 9 through 11 are redesignated as footnotes 8 through 10, respectively.

§ 319.37-13 [Amended]

18. In § 319.37-13, footnote 12 is redesignated as footnote 11.

19. Section 319.40-4 is amended as follows:

a. By revising paragraph (a).

b. By removing paragraph (b)(3), paragraph (c) including footnote 2, and paragraph (d).

The revision reads as follows:



§ 319.40-4 Application for a permit to import regulated articles; issuance and withdrawal of permits.

(a) Application procedure. A written application for a permit must be obtained and submitted in accordance with §§ 319.7 through 319.7-5.

\* \* \* \* \*

§ 319.40-5 [Amended]

20. In § 319.40-5, footnote 3 is redesignated as footnote 1.

§ 319.40-9 [Amended]

21. In § 319.40-9, footnotes 4 and 5 are redesignated as footnotes 2 and 3, respectively.

§ 319.40-10 [Amended]

22. In § 319.40-10, footnote 6 is redesignated as footnote 4.

23. Section 319.41-2 is revised to read as follows:

§ 319.41-2 Application for permits.

Persons contemplating the importation of any of the articles specified in § 319.41-1(b) shall first make application to the Plant Protection and Quarantine Program for a permit in accordance with §§ 319.7 through 319.7-5.

(Approved by the Office of Management and Budget under control number 0579-0049)

24. Section 319.41-6 is revised to read as follows:

§ 319.41-6 Importations by mail.

In addition to entries by freight or express provided for in § 319.41-5, importations are permitted by mail of mature corn on the cob from the countries specified in § 319.41-1(b)(2), and clean shelled corn and clean seed of the other plants covered by § 319.41, provided that a permit

has been issued for the importation in accordance with §§ 319.7 through 319.7-5 and all conditions of the permit are met.

(Approved by the Office of Management and Budget under control number 0579-0049)

25. Section 319.55-2 is revised to read as follows:

§ 319.55-2 Application for permit.

Application for a permit to import seed or paddy rice from Mexico or rice straw or rice hulls from any country may be made to the Plant Protection and Quarantine Programs in accordance with §§ 319.7 through 319.7-5.

(Approved by the Office of Management and Budget under control number 0579-0049)

§ 319.55-4 [Removed and Reserved]

26. Section 319.55-4 is removed and reserved.

27. Section 319.55-7 is revised to read as follows:

§ 319.55-7 Importations by mail.

Importations of seed or paddy rice, rice straw, and rice hulls from all foreign countries and localities may be made by mail or cargo, provided that a permit has been issued for the importation in accordance with §§ 319.7 through 319.7-5 and all conditions of the permit are met.

(Approved by the Office of Management and Budget under control number 0579-0049)

28. Section 319.56-3 is amended as follows:

- a. By revising paragraph (b)(2).
- b. By removing paragraphs (b)(3), (b)(4), (b)(5), and (b)(6).

c. In paragraph (c)(1), by removing the words “under paragraph (b) of this section” and adding in their place the words “in accordance with this section and with §§ 319.7 through 319.7-5”.

The revision reads as follows:

§ 319.56-3 General requirements for all imported fruits and vegetables.

\* \* \* \* \*

(b) \* \* \*

(2) Persons contemplating the importation of any fruits or vegetables under this subpart must apply for a permit in accordance with §§ 319.7 through 319.7-5.

\* \* \* \* \*

29. Section 319.75 is amended as follows:

a. By revising the section heading.

b. In paragraphs (a) and (c), by removing the word “restricted” each time it appears and adding the word “regulated” in its place.

The revision reads as follows:

§ 319.75 Restrictions on importation of regulated articles; disposal of articles refused importation.

\* \* \* \* \*

§ 319.75-1 [Amended]

30. In § 319.75-1, the definition of phytosanitary certificate of inspection is amended by removing the word “restricted” each time it appears and adding the word “regulated” in its place.

31. Section 319.75-2 is amended as follows:

a. By revising the section heading, including footnote 1.

b. In paragraph (a), introductory text, by removing the word “restricted” and adding the word “regulated” in its place.

The revisions read as follows:

§ 319.75-2 Regulated articles.<sup>1</sup>

\* \* \* \* \*

<sup>1</sup> The importation of regulated articles may be subject to prohibitions or restrictions under other provisions of 7 CFR part 319. For example, fresh whole chilies (Capsicum spp.) and fresh whole red peppers (Capsicum spp.) from Pakistan are prohibited from being imported into the United States under the provisions of Subpart--Fruits and Vegetables of this part.

\* \* \* \* \*

32. Section 319.75-3 is revised to read as follows:

§ 319.75-3 Permits.

A regulated article may be imported only after issuance of a written permit or oral authorization by the Plant Protection and Quarantine Programs in accordance with §§ 319.7 through 319.7-5.

(Approved by the Office of Management and Budget under control number 0579-0049)

§ 319.75-4 [Amended]

33. Section 319.75-4 is amended by removing the word “restricted” and adding the word “regulated” in its place.

§ 319.75-5 [Amended]

34. In § 319.75-5, paragraphs (a) and (b) are amended by removing the word “restricted” each time it appears and adding the word “regulated” in its place.

§ 319.75-6 [Amended]

35. Section 319.75-6 is amended by removing the word “restricted” and adding the word “regulated” in its place.

§ 319.75-7 [Amended]

36. Section 319.75-7 is amended as follows:

- a. By removing the word “restricted” and adding the word “regulated” in its place.
- b. By redesignating footnote 3 as footnote 4.

§ 319.75-8 [Amended]

37. Section 319.75-8 is amended by removing the word “restricted” both times it appears and adding the word “regulated” in its place.

§ 319.75-9 [Amended]

38. In § 319.75-9, paragraphs (a), (b) and (c) are amended by removing the word “restricted” each time it appears and adding the word “regulated” in its place.

PART 322–BEES, BEEKEEPING BYPRODUCTS, AND BEEKEEPING EQUIPMENT

39. The authority citation for part 322 continues to read as follows:

Authority: 7 U.S.C. 281; 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

40. In § 322.13, paragraph (b) is revised to read as follows:

§ 322.13 General requirements; restricted organisms.

\* \* \* \* \*

(b) Persons importing restricted organisms into the United States must be Federal, State, or university researchers; be at least 18 years of age; and be physically present during normal business hours at an address within the United States specified on the permit during any periods when articles are being imported or moved interstate under the permit. All such importations must be for research or experimental purposes and in accordance with this part.

§ 322.14 [Amended]

41. In § 322.14, paragraph (a)(1) is amended by removing the second and third sentences.

42. Section 322.15 is amended as follows:

- a. By revising the section heading.
- b. By adding a new paragraph (c)(5).
- c. By revising paragraph (e).

The revisions and addition read as follows:

§ 322.15 APHIS review of permit applications; denial or revocation of permits.

\* \* \* \*

(c) \* \* \*

(5) APHIS may also deny a permit to import restricted organisms:

(i) To a person who has previously failed to comply with any APHIS regulation, except:

(A) A permit revoked in an investigation concerning that failure has been reinstated on appeal, at the discretion of APHIS; or

(B) All measures ordered by APHIS to correct the failure, including but not limited to, payment of penalties or restitution, have been complied with to the satisfaction of APHIS.

(ii) To a person who has previously failed to comply with any international or Federal regulation or instruction concerning the importation of prohibited or restricted foreign agricultural products; or

(iii) If the application for a permit contains information that is found to be materially false, fraudulent, deceptive, or misrepresentative.

\* \* \* \*

(e) Appealing the denial of permit applications or revocation of permits. If your permit application has been denied or your permit has been revoked, APHIS will inform you in writing, including by electronic methods, as promptly as circumstances permit and will include the reasons for the denial or revocation. You may appeal the decision by writing to APHIS within 10 business days from the date you received the communication notifying you of the denial or revocation of the permit. Your appeal must state all facts and reasons upon which you are relying to show that your permit application was wrongfully denied or your permit was wrongfully revoked. APHIS will grant or deny the appeal in writing and will state in writing the reason for the decision. The denial or revocation will remain in effect during the resolution of the appeal.

\* \* \* \* \*

#### PART 360–NOXIOUS WEED REGULATIONS

43. The authority citation for part 360 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

44. Section 360.304 is amended as follows:

- a. By revising the section heading.
- b. In paragraph (a)(5), by removing the period at the end of the sentence and adding the word “; or” in its place.
- c. By adding new paragraphs (a)(6) and (a)(7).
- d. In paragraph (b), introductory text, by removing the word “cancel” and adding the word “revoke” in its place.

e. In paragraph (c), by removing the word “canceled” each time it appears and adding the word “revoked” in its place, and by removing the word “cancellation” and adding the word “revocation” in its place.

The revision and additions read as follows:

§ 360.304 Denial of an application for a permit to move a noxious weed; revocation of a permit to move a noxious weed.

(a) \* \* \*

(6) The application for the permit contains information that is found to be materially false, fraudulent, or deceptive; or

(7) APHIS may deny a permit to a person who has previously failed to comply with any APHIS regulation.

\* \* \* \* \*

45. Section 360.305 is amended as follows:

a. By revising the section heading.

b. By removing the word “canceled” each time it appears and adding the word “revoked” in its place.

The revision reads as follows:

§ 360.305 Disposal of noxious weeds when permits are revoked.

\* \* \* \* \*

Done in Washington, DC, this 4th day of April 2014 .

Kevin Shea,



Administrator, Animal and Plant Health Inspection Service.

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